IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3301 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R. TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHIRUBHAI S KUDESA

Versus

DISTRICT DEVELOPMENT OFFICER

Appearance:

MR JAYANT PATEL for Petitioner

MR HS MUNSHAW for Respondent No. 1, 2

CORAM : MR.JUSTICE RAVI R. TRIPATHI

Date of decision: 23/02/2001

ORAL JUDGEMENT

The present petition is filed against the order dated 3.9.1990 whereby the petitioner was transferred from District Panchayat establishment to the State Government establishment. Mr.Jayant Patel, learned advocate for the petitioner submitted that the Court had

granted ad interim relief in terms of para 10(B), which reads as under:

"10(B) Pending admission and final hearing of this petition, an interim injunction restraining respondents, their agents and servants from transferring services of the petition from set up of the Amreli District Panchayat to Roads & Buildings Deptt. of State Govt. as work charged clerk may kindly be granted."

2. It is further pointed out by Mr.Patel that against the said order the authorities had filed Letters Patent Appeal No.176 of 1991 with Civil Application No.1377 of 1991. This Court has passed the following order in the aforesaid Civil Application:

"Considering the facts of the case, it appears to us that until and unless the question as to whether or not the respondent herein (petitioner in Special Civil Application No.3301 of 1991), against his wish, can be transferred under a different employer is finally decided at this stage. We, therefore, vacate the ad interim order passed in Civil Application No.1377 of 1991. Mr.Munshaw, learned counsel for the appellant has however stated that the road under the Panchayat, where the writ petitioner respondent herein had been actually working, has been handed over to the State Govt. Such contention however, is disputed by the learned counsel for the respondent herein. It is not necessary for us to go into the said question for the present.

Civil Application NO.1377 of 1991 is accordingly disposed of without any order as to costs."

3. Last time when the matter was taken up for hearing, Mr.Munshaw, learned advocate appearing for the respondents had sought time to get instructions in the matter on account of passage of time. Today, Mr.Munshaw, learned advocate placed on record a copy of letter dated 9.2.2001, wherein it is stated that on account of retirement of the employees there is a post vacant with the District Panchayat and there is no objection if the petitioner is accommodated in the Panchayat. Mr.Patel, learned advocate for the petitioner submitted that this might give further cause of action to the petitioner if the petitioner is treated a fresh entrant in the service

of District Panchayat.

4. In view of the facts that the petitioner had remained with the District Panchayat all along and the order which is under challenge is dated 3.9.1990, the present petition is required to be allowed on the short ground that the petitioner has continued to work with the District Panchayat, may be under orders of this Court, establishes the requirement of the services of the petitioner.

5. Hence the impugned order dated 3.9.1990 is quashed and set aside. However, it is made clear that in case the District Panchayat requires in exigencies of work, this quashing of order dated 3.9.1990 will not be a bar for passing a fresh order in accordance with law. It also goes without saying that in case the Panchayat passes an order, it will be open for the petitioner to challenge the same and the order passed in the present petition will not be an estoppel.

6. The petition is allowed in the aforesaid terms. Rule is made absolute accordingly with no order as to costs.

(Ravi R. Tripathi, J.)

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